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No. 00-

IN THE

Supreme Court of the United States

JON MAY,

Petitioner,

v.

KATHERINE HARRIS, SECRETARY OF STATE, STATE OF FLORIDA AND DEPARTMENT OF STATE, STATE OF FLORIDA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JON MAY
Counsel of Record
CAROL COHEN
MAY & COHEN P.A.
Attorneys for Petitioner
200 East Broward Boulevard
Suite 1210
Fort Lauderdale, Florida 33301
(954) 761-7201

163609

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

30 pp

QUESTIONS PRESENTED

Whether awarding all of a state's electors to the presidential candidate who receives a majority of votes cast violates the principle of one-man one-vote, denies millions of citizens the right to equal protection of the law under the Fourteenth Amendment, and undermines the legitimacy of the presidency when it leads to the election of a president who did not receive the greatest number of votes in the general election.

Whether this Court should grant a preliminary injunction until the constitutional questions presented herein can be resolved by the courts.

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Appendix B — Order Of The United States District Court For The Southern District Of Florida Denying Motion For Preliminary Injunction Dated And Filed November 14, 2000 ..... 3a

Petitioner Jon May respectfully petitions for a writ of certiorari to review the Order of the District Court denying Petitioner's motion for a preliminary injunction to halt the selection of Florida Electors on the basis of the winner takes all.

OPINIONS BELOW

The Order of the District Court denying Petitioner's Motion for a Preliminary Injunction is contained within the appendix. (App. A).

STATEMENT OF JURISDICTION

Title 28 U.S.C. § 1254(1) provides that the Supreme Court may utilize its certiorari jurisdiction either "before of after rendition of judgment" by a court of appeals. Title 28 U.S.C. § 2101(e) provides that "[a]n application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." This Petition is an application to review the District Court's denial of Petitioner's motion for preliminary injunction. That order was rendered on November 14, 2000 and on November 16, 2000 an appeal was taken to the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. § 1292(a)(1).

While certiorari before judgment is "an extremely rare occurrence," *Coleman v. PACCAR, Inc*, 424 U.S. 1301, 1304 (1976), it is available "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court." Rule 11. Such jurisdiction has been exercised to consider questions of great public importance.

See, e.g., Mistretta v. United States, 488 U.S. 361, 371 (1989) ("imperative public importance" and "disarray among the Federal District Courts" over constitutionality of sentencing guidelines); *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981) (issues arising out of presidential actions to secure release of hostages held by Iran "are of great significance and demand prompt resolution"); *United States v. Nixon*, 418 U.S. 683, 686-87 (1974) (prompt resolution needed to resolve questions of presidential confidentiality); *United States v. United Mine Workers*, 330 U.S. 258, 269 (1947) (nationwide coal strike); and *Ex Parte Quirin*, 317 U.S. 1 (1942) (war time court martial of enemy saboteurs). The precise procedural posture presently before this Court was found in *Youngstown Co. v. Sawyer*, 343 U.S 579 (1952) where this Court granted certiorari before judgment although the case was in preliminary injunction state.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution: Amendment XIV

> Section 1 — All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2 — Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

United States Constitution, Article II, Clause 2
as amended by the Twelfth Amendment

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same Sta[illegible]

with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed;]

Title 28 U.S.C. § 1343(3)

a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

Section 103.011, Florida Statutes (2000)

Electors of President and Vice President

Electors of President and Vice President, known as presidential electors, shall be elected on the first Tuesday after the first Monday in November of each year the number of which is a multiple of 4. Votes cast for the actual candidates for President and Vice President shall be counted as votes cast for the presidential electors supporting such candidates. The Department of State shall certify as elected the presidential electors of the candidates for President and Vice President who receive the highest number of votes.

STATEMENT OF THE CASE

Petitioner is a resident of Broward County, Florida and is a registered Democrat. On November 7,2000, Petitioner voted for Vice President Albert Gore for President. On November 12, 2000, Petitioner filed suit in the District Court for the Southern District of Florida. Petitioner sought an order declaring Section 103.011 of the Florida Statutes unconstitutional. That section provided that all of Florida's 25 electoral votes be awarded to the candidate that won a majority of the votes cast in the general election for President. Petitioner contended Section 103.011 violated the principle of one-man one-vote guaranteed by the equal protection clause of the Fourteenth Amendment. Petitioner also sought a preliminary injunction to stop the Secretary of State of the State of Florida from certifying Florida's electors until this constitutional question could be resolved.

On November 14, 2000, the District Court denied the motion for preliminary injunction. On November 16, 2000 a notice of appeal was filed in the District Court and docketed with the Eleventh Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

I.

AWARDING ALL OF A STATE'S ELECTORS TO THE PRESIDENTIAL CANDIDATE WHO RECEIVES A MAJORITY OF VOTES CAST VIOLATES THE PRINCIPLE OF ONE-MAN ONE-VOTE, DENIES MILLIONS OF CITIZENS THE RIGHT TO EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT, AND UNDERMINES THE LEGITIMACY OF THE PRESIDENCY WHEN IT LEADS TO THE ELECTION OF A PRESIDENT WHO DID NOT RECEIVE THE GREATEST NUMBER OF VOTES IN THE GENERAL ELECTION

One November 7, 2000 millions of Americans went to bed believing that the vote they cast for President counted. The next day, they were astonished to learn that because of winner-take-all provisions in forty-eight states, their vote counted for nothing. Indeed, the votes of their neighbors might well have a weight far greater than that of individual voters in other states. Because of this statutory scheme, the next President of the United States may well be the candidate who lost the popular vote.

Regardless of the out come of any recount in Florida, Section 103.011 will award all of Florida's 25 electoral votes to the candidate who won a majority of votes in the State.

Assuming that Governor George W. Bush prevails in Florida, nearly 3 million votes cast for Vice President Gore will count for nothing. On the other hand, 636,969 votes cast for Vice President Gore in Iowa will have gained him 7 electoral votes.

Petitioner has challenged the constitutionality of Florida Statute 103.011 before the District Court for the Southern District of Florida and has sought a preliminary injunction. The District Court denied the preliminary injunction. Unless the Secretary of State of the State of Florida is stopped from appointing the Electors to the Electoral College, Petitioner's right to have his voted counted may become moot before the issue is resolved in the courts below.

The issues presented herein are of undeniable significance. As Justice Douglas observed in *Moore v. Ogilvie*, 394 U.S. 814, 819 (1969), "The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government." Indeed, this Court has reviewed numerous voting rights cases where the numbers of voters affected were far fewer than the millions involved herein. *Gray v. Sanders*, 372 U.S. 368 (1963) (Georgia's system for selecting United States Senators violated principle of one-man one-vote); *Reynolds v. Sims*, 377 U.S. 533 (1964) (Alabama's system for electing representatives to its bicameral legislature violated principle of one-man one vote); *Fortson v. Morris*, 385 U.S. 231 (1967) (Georgia's method of selecting Governor when no candidate has won majority of votes held not to violate Fourteenth Amendment); *Avery v. Midland County, Texas*, 390 U.S. 474 (1968) (selection of county commissioners from single member districts of substantially unequal population violates principle of one-man one-vote);

Williams v. Rhodes, 393 U.S. 23 (1968) (Ohio's laws restricting ability of independent parties to obtain placement on the ballot in presidential elections held to violate Equal Protection Clause of Fourteenth Amendment); *Moore v. Ogilvie, supra* (Illinois restrictions limiting ability of third party to nominate candidates for general election unconstitutional); *Hadley v. Junior College District of Metropolitan Kansas City, Missouri*, 397 U.S. 50 (1970) (election of trustees for junior college district from school districts of unequal sizes held to violate principle of one-man one vote); *Board of Estimate of City of New York v. Morris*, 489 U.S. 688 (1989) (selection of members of Board of Estimate from districts of unequal sizes held unconstitutional under Equal Protection Clause).

Although the Constitution grants to the states the choice of how electors are to be chosen, it is well established that the states do not have "the power to select electors in such a way as to violated express constitutional commands that specifically bar States from passing certain kinds of laws." *Williams v. Rhodes*, *supra* at 29. Thus, "no state can pass a law regulating elections that violates the Fourteenth Amendment's command that 'No State shall * * * deny to any person * * * the equal protection of the laws.' " *Id.* But that is precisely what the State of Florida (as well as 47 other states) has done in appointing all of its 25 electors from the candidate who received the greatest number of votes in the general election.

The lesson in each of the voting cases decided by this Court is that one cannot divide up the body of voting citizens in a way that dilutes the votes of any one citizen. As this Court stated in *Gray v. Sanders*, *supra*:

> How then can one person be given twice or 10 times the voting power of another person in a

> statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote-whatever their race, whatever their sex, whatever their occupation, whatever their income, and whatever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment.

Id. at 379. Surely if the "application of the one man, one vote principle of *Reynolds v. Simms*, 377 U.S. 533 (1964), to units of local government is of broad public importance," *Avery v. Midland County, Texas* at 476, the application of the one-man one-vote principle to the election of the President of the United States is an issue of equal magnitude.

In the case of the election of the President of the United States, the geographical unit is the entire United States. The President is not a representative of one district or one state. The President is the Chief Executive of the Federal Government, the Commander-in-Chief of our armed forces, and the leader of an entire nation. No citizen, and certainly not 2.9 million should be denied their voice in the selection of the man for this office.

Those who have sought to justify the inherent inequality in the Electoral College, have argued that it is simply a consequence of living in a republic. But the republic we live in today, is not the republic of our founding fathers. The authors of our Constitution were afraid of the electorate. In creating the Electoral College they tried to create a deliberative body that could independently choose the best

man to lead the nation, uninfluenced by political parties or the passions of the day. But the same document that created the Electoral College, counted slaves as three-fifths of a human being and denied woman and minorities the right to vote. It was a document that was amended specifically to give to all persons of this Nation the right to the equal protection of the laws. Fundamentally, the principle of one-man one-vote is the means by which citizens of the United States can insure that all of their constitutional protections are secured. As this election has demonstrated, it is now time to affirm that these principles apply with equal force to the election of the President of the United States.

II.

THIS COURT SHOULD GRANT A PRELIMINARY INJUNCTION UNTIL THE CONSTITUTIONAL QUESTIONS PRESENTED HEREIN CAN BE RESOLVED BY THE COURTS

The District Court denied Petitioner's motion for a preliminary injunction finding that Petitioner had not shown a likelihood of success on the merits. The District Court's ruling was based in part upon its belief that this Court had considered and rejected the argument made by Petitioner herein when it summarily denied the attempt by the State of Delaware to bring an original action against other states to force district appointment of electors. *State of Delaware v. State of New York*, 385 U.S. 895 (1966), relied upon in *Penton v. Humphrey*, 264 F. Supp. 250 (S.D. Miss. 1967). The District Court's ruling was also based upon its conclusion that this Court had forgone previous opportunities to consider whether winner-take-all schemes violated the principle of one-man-one vote. The District Court's

assumptions are erroneous under the jurisprudence of this Court. *Davis v. Bandemer*, 478 U.S. 109, 121 (1986). This Court should therefore grant Petitioner a preliminary injunction to prevent the Secretary of State of Florida from certifying the state's 25 electors until such time as the court's resolve the constitutional questions presented herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JON MAY
Counsel of Record
CAROL COHEN
MAY & COHEN P.A.
Attorneys for Petitioner
200 East Broward Boulevard
Suite 1210
Fort Lauderdale, Florida 33301
(954) 761-7201

APPENDIX

APPENDIX A — NOTICE OF APPEAL DATED AND FILED NOVEMBER 16, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7671-CIV-DIMITROULEAS

JON MAY, A CITIZEN OF THE STATE OF FLORIDA,

Appellant,

vs.

KATHERINE HARRIS, IN HER REPRESENTATIVE CAPACITY, SECRETARY OF STATE, THE STATE OF FLORIDA and THE DEPARTMENT OF STATE, THE STATE OF FLORIDA,

Appellee.

NOTICE OF APPEAL

Notice is hereby given that Appellant Jon May, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the November 14, 2000 order of the District Court denying the Plaintiff's request for a preliminary injunction. This order is immediately appealable pursuant to 28 U.S.C. §1292(a)(1).

Appendix A

Respectfully submitted,

s/ Jon May
Jon May, Esq.
200 East Broward Blvd.
Suite 1210
Fort Lauderdale, Fla. 33301
Fla. Bar No. 276571
(954) 761-7201 (office)
(954) 767-8343 (fax)

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DENYING MOTION FOR PRELIMINARY INJUNCTION DATED AND FILED NOVEMBER 14, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-7671-CIV-DIMITROULEAS

JON MAY, a Citizen of The State of Florida,

Plaintiff,

vs.

KATHERINE HARRIS, in her representative capacity, Secretary of State, State of Florida, and THE DEPARTMENT OF STATE, THE STATE OF FLORIDA,

Defendants.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE is before the Court upon Plaintiff's Motion for Preliminary Injunction [DE 2]. The Court has carefully considered the Plaintiff's complaint and motion, and is otherwise fully advised in the premises.

Appendix B

I. BACKGROUND

Plaintiff seeks declaratory and injunctive relief in this constitutional challenge to Florida Statutes Section 103.011 (2000), which awards electoral votes in presidential elections on the basis of "winner take all." Plaintiff alleges that this statute violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the doctrine of "one-man, one-vote." Plaintiff supports his argument by citing to the landmark election decisions of the United States Supreme Court, *Grey v. Sanders*, 372 U.S. 368 (1963), and *Reynolds v. Sims*, 377 U.S. 533 (1964), which struck down apportionment or winner take all schemes in state elections of state representatives and United States Senators. Plaintiff argues by analogy that application of these principles of "one-man, one-vote" under the Equal Protection Clause should lead to a ruling of unconstitutionality of Florida's "winner takes all" system of appointing presidential electors.

II. DISCUSSION

A. Preliminary Injunction Standard

In order to obtain a preliminary injunction, Plaintiff must establish the following four elements: (1) a substantial likelihood that the plaintiff will prevail on the merits; (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiff outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. *Church v.*

City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994). Because a "preliminary injunction is an extraordinary and drastic remedy," it is "not to be granted until the movant clearly carries the burden of persuasion as to the four prerequisites." *Id.* (quoting *Northeastern Fl. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)); *see also McDonald's Corp. v. Roberts*, 147 F.3d 1301, 1306 (11th Cir. 1998).

B. Substantial Likelihood of Success on the Merits

As Plaintiff cites in his motion, the United States Constitution states in Article II, Section 1:

> Each State shall appoint, in such Manner as the Legislature may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. . . .

U.S. Const., Art. II, §1.

This provision was addressed in detail by the United States Supreme Court in *McPherson v. Baker*, 146 U.S. 1, 25-35 (1892), with the Court noting that the Constitution specifically gave plenary authority to state legislatures to direct the method for selecting electors. However, as Plaintiff argues, and this Court agrees, the Supreme Court has also stated that such power may be limited by other parts of the Constitution. *Williams v. Rhodes*, 393 U.S. 23, 29, 89 S.Ct. 5, 9 (1968) ("There, of course, can be no question but that this section does grant extensive power to the States to pass

laws regulating the selection of electors. But the Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution.") (*Williams* case struck down ballot access provisions of state law as applied to third party presidential candidates).

The Florida statute in question, Section 103.011, states:

> Electors of President and Vice President, known as presidential electors, shall be elected on the first Tuesday after the first Monday in November of each year the number of which is a multiple of 4. Votes cast for the actual candidates for President and Vice President shall be counted as votes cast for the presidential electors supporting such candidates. The Department of State shall certify as elected the presidential electors of the candidates for President and Vice President who receive the highest number of votes.

Florida Statutes Section 103.011 (2000).

Most states in the nation use the "winner takes all" system of appointing presidential electors.[1] Plaintiff argues

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1. In the early presidential elections of this country, many states utilized the district method of appointing electors, rather than a winner takes all system. For an interesting historical analysis of the gradual trend away from the district system to a winner takes all system, see *McPherson*, 146 U.S. at 25-35.

that the United States Supreme Court decisions of the early 1960's grafted additional protections under the Equal Protection Clause of the Fourteenth Amendment that now call into question the "winner takes all" system. See *Baker v. Carr*, 369 U.S. 186 (1962), *Grey v. Sanders*, 372 U.S. 368 (1963), and *Reynolds v. Sims*, 377 U.S. 533 (1964). None of these cases involved a challenge to a state statute concerning appointment of electors. Plaintiff does quote extensively from a footnote in *Grey*, in which the Court expressed some displeasure with the Electoral College effect on one-man, one-vote, stating that "this conception of political equality belongs to a bygone day." *Grey*, 372 U.S. at 377, n. 8. However, on the next page, the Supreme Court states that analogies to the electoral college are inapposite to the Grey case, and that "inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent inequality, but implied nothing about the use of an analogous system by a State in a statewide election." *Id.* at 378. Thus, the very decision principally relied upon by Plaintiff to support his argument appears to concede that though inherently inequitable, the electoral college survives to this day due to its specific validation in our Constitution.

In fact, there have been several other direct challenges to the state practice of appointing electors on a "winner takes all" basis. This Court is fully satisfied that the instant case is no different from the previous decisions on this issue. In each of these cases, such a challenge has been rejected. For example, a three-judge panel of the Eastern District of Virginia stated:

Appendix B

> [I]t is difficult to equate the deprivations imposed by the unit rule with the denial of privileges outlawed by the one-person, one-vote doctrine or banned by Constitutional mandates of protection. In the selection of electors the rule does not in any way denigrate the power of one citizen's ballot and heighten the influence of another's vote. Admittedly, once the electoral slate is chosen, it speaks only for the element with the largest number of votes. This in a sense is discrimination against the minority voters, but in a democratic society the majority must rule, unless the discrimination is invidious. No such evil has been made manifest here. Every citizen is offered equal suffrage and no deprivation of the franchise is suffered by anyone.

Williams v. Virginia State Bd. of Elections, 288 F.Supp. 622, 627 (E.D. Va. 1968), *aff'd*, 393 U.S. 320, 89 S.Ct. 555 (1969).

Nine years later, the Chief Judge of the Middle District of Alabama, in rejecting a similar challenge to the winner takes all elector appointment system, stated:

> The discrimination of which plaintiffs complain (if it is discrimination) is a product of the constitutional mandate that our president be elected through an "Electoral College." As such, it is a type of "discrimination" specifically sanctioned by the Constitution. Thus, while this "discrimination" may be considered by some to be unfair, it is hardly "unconstitutional."

Hitson v. Baggett, 446 F.Supp. 674, 676 (N.D. Ala. 1978) (citation omitted), *aff'd*, 580 F.2d 1051 (5th Cir. 1978),[2] *cert. denied*, 439 U.S. 1129, 99 S.Ct. 1047 (1979).

The first such challenge to a winner take all system after the Supreme Court cases cited by Plaintiff was rejected by a three-judge panel in the Southern District of Mississippi. *Penton v. Humphrey*, 264 F. Supp. 250 (S.D.Miss. 1967). That court, specifically noting its increased jurisdiction over voting rights following *Baker*, *Gray*, and *Reynolds*, based its rejection of a challenge to a "winner takes all" system upon the United States Supreme Court's summary denial of an attempt by the State of Delaware to bring an original action against other states to force district appointment of electors. *Penton*, 264 F.Supp. at 251-252 (citing *State of Delaware v. State of New York et al.*, 385 U.S. 895, 87 S.Ct. 198 (1966)). The Mississippi court concluded that although no opinion was written, the Supreme Court must have decided the case on the merits. *Penton*, 264 F.Supp. at 252.

III. CONCLUSION

Whether or not the Mississippi court's analysis of the reasoning of the Supreme Court's decision in the State of Delaware case is true, this Court can conclusively state that all of the challenges to the winner takes all system of

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2. The decisions of the United States Court of Appeals for the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit for this court, the district courts, and the bankruptcy courts in the circuit. *Bonner v. Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

appointing electors have been rejected by Courts, even after the Supreme Court decisions cited by Plaintiff in support of his challenge.[3] Moreover, the Supreme Court has had several opportunities to address the issue since 1966, and has repeatedly declined to address the issue. Therefore, this Court concludes that Plaintiff cannot show a substantial likelihood of success on the merits of his claim, in that the all courts that have addressed the issue have upheld statutes similar to Florida Section 103.011.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Preliminary Injunction [DE 2] is hereby **DENIED**; and

2. Plaintiff is ordered to file a status report by November 27, 2000. Failure to file a status report may result in dismissal.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 14 day of November, 2000.

s/ William P. Dimitrouleas
WILLIAM P. DIMITROULEAS
United States District Judge

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3. Two additional district court decisions that concern challenges to other section laws but cite with support the cases affirming the winner takes all system for appointment of electors are *Graham v. Fong Eu*, 403 F.Supp. 37, 46-47 (N.D.Cal. 1975) (three-judge panel), *aff'd*, 423 U.S. 1067, 96 S.Ct. 851 (1976); *Smith v. State Executive Committee of Democratic Party of Georgia*, 288 F.Supp. 371, 375 (N.D. Ga. 1968).